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REMARKS

Claims 29-48 are pending in the application. No Claim stands allowed. Claims 29 and 35 are amended to overcome rejection under 35 USC § 103(a) as being unpatentable over Gibbons et al. (U.S. Patent No. 4,888,222). New claims 49-50 are added. No new matter is added. Support for the amended claim 29 and new claims 49-50 can be found throughout the specification, particularly pages 5-8.

Favorable reconsideration and allowance are requested in light of the foregoing remarks which follow.

1. Rejection of claims 29-48 under 35 USC § 103(a) as being unpatentable over Gibbons et al (U.S. Patent No. 4,888,222).

The Office Action rejects claims 29-48 under 35 USC § 103(a) as being unpatentable over Gibbons et al (U.S. Patent No. 4,888,222). This rejection is respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Indeed, both the suggestion and the expectation of success must be found in the prior art, not in the Applicant's disclosure. In re Vaeck, 20 USPQ2d 1438 (Fed. Cir. 1988) (emphasis added). The Applicant believes that the Examiner has failed to make a *prima facie* case of obviousness.

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Applying these legal requirements to the instant case clearly shows that there is no legal basis for the obviousness rejection as it pertains to the amended claims. Gibbons et al clearly does not teach, or for that matter suggest a first polyamide layer consisting essentially of one or more polyamides applied directly on to the paperboard substrate and a first oxygen barrier layer of EVOH applied directly on the first polyamide layer. Thus, as claimed the first polyamide layer is bounded on one side by the paperboard substrate and on the other side by the first oxygen barrier layer. Gibbons et al clearly does not teach or even suggested such a structure. As shown in the figures 1 and 2 and pages 5-8 of specification, Gibbons et al clearly requires a "caulk" or "tie" layer between the "abuse resistant layer" and the "oxygen barrier layer". Also, see Gibbons et al at lines 2 to 12 of column 5, line 60 of column 5 to line 1 of column 6 and line 20 to line 14 of column 6.

The language of present claim clearly excludes an intermediate caulk or tie layer. Note that in claims 29 and 35, the polyamide layer is "consisting essentially of" one or more polyamides. It is well settled law that the use of this term excludes additional unspecified ingredients which would affect the basic and nonobviousness characteristics of the product defined in the balance of the claim. This clearly distinguishes the claimed product over the Gibbons et. al. products which in this case require at least one additional material caulk or tie layer between the polyamide layer and the EVOH layer. The "consisting essentially of" language in claims 29 and 35 exclude the caulk or tie layer from within the scope of these claims because inclusion of such a layer would affect the novel and nonobvious characteristics of the claimed invention. See In re Garnero, 412 F.2d 276, 162 U.S.P.Q. 221 (C.C.P.A. 1964).

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Note that in the new dependent claims 49 and 50, the first polyamide layer is consisting one or more polyamides. The term "consisting of" excludes the inclusion of other materials except for impurities ordinarily associated the stated material. Thus, this language clearly distinguishes the claimed laminate over the Gibbons et al product which requires a caulk or tie layer between the polyamide layer and the first oxygen barrier EVOH layer. (See Noriam Corp v. Stryher Corp. 363 F.3d 1321, 70 USPQ 2d. 1508 (Fed. Cir. 2004).

It is readily apparent that Gibbons et al does not provide an apparent basis for concluding a person of ordinary skill in the art would be motivated to modify the cited reference so as to arrive at the claimed invention with a reasonable expectation of success in achieving the advantages of the claimed invention. Thus, the amended independent claims 29 and 35 define a patentable subject matter. Each of claims 31-34, 36-48, 49 and 50 are also patentable because they depend, either directly or indirectly upon amended claim 29 and 35 and therefore inherits each and every element of their parent claims and any intervening claims. The nonobviousness rejection is clearly inappropriate and should be withdrawn.

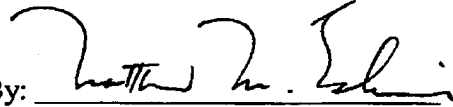
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CONCLUSION

Therefore, Applicants respectfully submit that the independent claims 29 and 35 particularly define and patentably distinguish the present invention over the cited reference. In addition, all of the dependent claims which depend from claims 29 and 35 also define a patentable subject matter. Accordingly, reconsideration of the rejections and allowance of claims 29-50 is earnestly requested. However, should the Examiner have any remaining questions and the attending to of which would expedite such action, the Examiner is invited to contact the undersigned at the telephone number listed below.

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Respectfully submitted,

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